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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JENNIFER LOEFFLER, Plaintiff and Appellant, v. TRABUCO HIGHLANDS COMMUNITY ASSOCIATION, Defendant and Respondent.	G059753 (Super. Ct. No. 30-2016-00873201) O P I N I O N

Appeal from postjudgment orders of the Superior Court of Orange County, Theodore R. Howard, Judge. Affirmed.

Steven Lewis Rader for Plaintiff and Appellant.

Kulik Gottesman Siegel & Ware, Leonard Siegel and Thomas M. Ware; Richardson Ober Denicholo and Daniel A. Nordberg for Defendant and Respondent.

This appeal arises from orders granting two postjudgment motions for attorney fees filed by Trabuco Highlands Community Association (Association). Finding no error, we affirm the postjudgment orders.

FACTS

We addressed the underlying merits of the case in our unpublished opinion *Loeffler v. Trabuco Highlands Community Association* (Dec. 10, 2021, G059087) [nonpub. opn.] (*Loeffler I*). *Loeffler I* concerned a dispute between homeowner Jennifer Loeffler and her homeowner's association, Trabuco Highlands Community Association (Association). (*Ibid.*) Loeffler appealed from the trial court's grant of summary adjudication in favor of Association on her claims for quiet title and slander of title. (*Ibid.*) She also asserted the court erred by entering judgment for Association after a bench trial on her claim of violation of the covenants, conditions, and restrictions (CC&R's), and by granting judgment in favor of Association on its cross-complaint seeking unpaid assessments. (*Ibid.*) We affirmed the court's judgment.

This appeal concerns two motions brought by Association for attorney fees, one on the complaint and another on a cross-complaint. One motion for attorney fees was filed by attorneys with the defense firm, Kulik Gottesman, Siegel & Ware. It sought $397,637.50 in attorney fees for its work defending against Loeffler's complaints and was supported by an attorney declaration and invoices.

The other motion for attorney fees was filed by counsel Daniel Nordberg for his services in responding to and participating in pre-judicial statutory internal dispute resolution (IDR) and alternative dispute resolution (ADR) procedures initiated by Loeffler as well as for his services on the cross-complaint. It sought $540,000 in attorney fees and was supported by Nordberg's declaration and exhibits including a time log. In opposition, Loeffler objected to some of the time entries of Nordberg's services for responding to and participating in statutory IDR and ADR proceedings initiated by Loeffler.

In its order, the trial court reduced the hourly rate of Nordberg from $400 to $240 to correspond with the hourly rate in Kulik Gottesman Siegel & Ware's (Kulik) declaration. The trial court also substantially reduced the number of Nordberg's hours.

It reasoned as follows: The Association's "success took the form of a directive that [Loeffler] was part of the [Association], and that she owed $17,000.00 in past assessments; this is hardly the kind of victory normally associated with a seven-figure fee request. According to the [Association], [Loeffler] and her unbridled mischief made this litigation unnecessarily convoluted and hostile, and only possible because her significant other was doing the litigation. [Loeffler] responds that the [Association] attorneys double-billed, doubled-down, and did all they could to 'milk' this. There is also the subtle message sent by the [Association] that it would spare no expense to crush member resistance. There is enough blame to go around." "[T]his Court concludes - after careful review of the ROA and the billing and the billing statements - that there would have been at least 30% fewer hours logged had the HOA used the same firm to handle both sides of the litigation. That brings the total fee award down to $456,330. In terms of apportionment, this Court is comfortable awarding 50% of that to the Kulik firm and 50% to the Richardson/Nordberg effort . . . ."

DISCUSSION

Loeffler asserts the trial court erred when it granted Association's two motions for attorney fees. Loeffler does not dispute Association was the prevailing party. Instead, she contends Association was not entitled to an attorney fee award on these claims. She also contends the fees awarded were unnecessary and unreasonable. We find no error and affirm the postjudgment orders.

I. *Standard of Review*

On review of an award of attorney fees after trial, the normal standard of review is abuse of discretion. (*Salehi v. Surfside III Condominium Owners' Assn.* (2011) 200 Cal.App.4th 1146, 1154.) "'Trial judges are entrusted with this discretionary

determination because they are in the best position to assess the value of the professional services rendered in their courts. [Citations.]'" (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 882.)

Loeffler asserts this appeal presents only questions regarding the trial court's decision to award attorney fees incurred to defend against causes of action for which no statutory or contractual recovery of fees is provided. Loeffler concludes de novo review of the legal basis for the award of attorney fees is justified where the determination of whether the criteria for an award have been satisfied amounts to statutory construction and a question of law.

However, Loeffler challenges the amount of fees awarded to Association. The trial court's determination as to whether fees were necessary goes to the reasonableness of the fee award, and, therefore, is not subject to de novo review. (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1094-1095.) De novo review is only appropriate where propriety of the fee award involves the interpretation of a statute, which is a matter of law. (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332.)

II. *Statutory Entitlement to Attorney Fees*

If authorized by statute, attorney fees may be awarded to a prevailing party. (Code of Civ. Proc. §§ 1032, subd. (b), 1033.5, subds. (a)(10)(B) & (c)(5).) In this case, an award of attorney fees is statutorily authorized. Pursuant to Civil Code section 5975, subdivisions (a) and (b),[1] a common interest development's "governing documents" may be enforced by either a homeowner against the Association, or the Association against a homeowner. The term "governing documents" relates to not only the CC&R's, but also bylaws, operating rules, articles of incorporation and any similar document which "govern the operation of the common interest development or association." (§ 4150.) Section 5975, subdivision (c), contains a mandatory reciprocal fee shifting provision: "In

[1] All further statutory references are to the Civil Code, unless otherwise indicated.

an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs."

Regardless of the title of the various causes of action or allegations, an award of attorney fees to the prevailing party is appropriate under section 5975, subdivision (c), when the gravamen of the entire complaint is to enforce the governing documents. (*Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker* (2016) 2 Cal.App.5th 252, 259-260.) Loeffler's action and the Association's cross-complaint were both based upon enforcing the CC&R's. She attempted to enforce article XVI of the CC&R's to invalidate the CC&R's, '"Notice of Addition of Territory and Supplement Declaration of Covenants, Conditions and Restrictions,'" and the delinquent assessment lien documents recorded against her property pursuant to her causes of action for quiet title, declaratory relief, breach of CC&R's, and slander of title.

Loeffler also sought to enforce section 6.06 of the CC&R's that requires "all regular assessments 'shall be assessed equally and uniformly against all Owners and their Lots.'" (Italics and bold omitted.) *Kaplan v. Fairway Oaks Homeowners Association* (2002) 98 Cal.App.4th 715, 719-720 (*Kaplan*), is dispositive. Like plaintiffs in *Kaplan*, Loeffler's relief is dependent on the enforcement of the Association's governing documents. Irrespective of her attempt to characterize her claims as for "quiet title," "slander of title," or an election challenge under section 5145, the "gist" of Loeffler's action is to enforce the governing documents. (*Kaplan, supra,* at pp. 719-720.) Accordingly, the trial court properly awarded fees pursuant to section 5975, subdivision (c). (*Ibid.*)

We note Loeffler does not genuinely contest Association's right to some attorney fees as a prevailing party. Instead, she argues it is not able to recover fees associated with the annexation vote issue. In her opposition to the Kulik motion for attorney fees Loeffler explained, "The first track involved Loeffler's causes of action and allegations premised on her contention that her property was not properly annexed into

the common interest development governed by [Association], as the annexation was not approved, by 'vote', or in writing, by a sufficient number of [Association's] members (the Annexation Issue). The second track turned on Loeffler's claim that, assuming her property was properly annexed into the common interest development, [Association's] imposition of monthly assessments which varied in amount among [Association's] members violated [Association's] governing documents (the Assessment Issue)." Her assertion the "annexation" issue is not subject to an award of fees is based upon section 5145, which provides in pertinent part as follows: "A member of an association may bring a civil action for declaratory or equitable relief for [an election violation] . . . . [¶] . . . A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation."

We agree with the general proposition that section 5145 does not authorize an award of fees based upon an election violation where no other theory supports a claim for fees. (*Artus v. Gramercy Towers Condominium Assn.* (2018) 19 Cal.App.5th 923, 945 [plaintiff "advances no other theory in support of her claim for statutory fees and costs"].) In other words, where the gravamen of the complaint is an election violation and not an action to enforce the governing documents, fees are not recoverable. In this unique case, however, the gist of Loeffler's action as a whole was not based upon a righteous election issue regarding annexation. Instead, the gravamen of Loeffler's entire complaint was to avoid the property assessments imposed by the CC&R's. As explained above, this properly fell under the statutory authority provided by section 5975, subdivision (c).[2]

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2 In *Loeffler I,* we affirmed the trial court's grant of summary judgment on Loeffler's individual cause of action for quiet title because it was barred by the applicable statute of limitations. We did not reach the merits of the issue. The fact that an individual claim challenged the election does not negate our analysis that the gravamen of the complaint as a whole was to enforce the governing documents.

III. *Contractual Entitlement to Attorney Fees*

The Association also sought fees pursuant to the contractual provision for attorney fees in article XV of the CC&R's. Section 1717, subdivision (a), provides that parties may contractually agree "that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded . . . to the prevailing party . . . ." Here, the CC&R's specified the prevailing party in litigation thereunder would recoup reasonable attorney fees: "Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs." (CC&R's Art. XV, Sec. 15.01(a).) Since parties are free to contract away the general rule that each party bear their own litigation expenses, such a provision is perfectly acceptable and enforceable. (Code of Civ. Proc., § 1021.)

The Association's CC&R's contain an attorney fee provision that entitled it to recover reasonable fees as the "prevailing party" irrespective of how Loeffler chooses to characterize her claims. As alleged in the cross-complaint, and as proven at trial, Loeffler breached her obligation to pay annual assessments to the Association. The cross-complaint was an appropriate legal action to enforce her obligation to pay assessments. Furthermore, as discussed above, the Association's cross-complaint sought to collect homeowner assessment obligations imposed by the governing documents. The trial court did not err by awarding attorney fees on the cross-complaint.

IV. *Reasonableness of Fees*

Loeffler's remaining arguments assert the trial court awarded unnecessary and unreasonable fees. We disagree.

The record reveals the trial court meticulously reviewed the supporting documents substantiating time entries. It went through the thousands of hours billed by two firms retained by the Association: one for pre-litigation ADR and prosecuting the cross-complaint, another to defend against Loeffler's claims. After reviewing the billing

records, the court concluded a straight blended billable hour rate of $240 per hour was reasonable. It then determined Association sought $651,900 in total attorney fees. The court reasoned the hours would have been reduced if the same firm handled all litigation and reduced the total fee award by 30 percent. It then split the award evenly between the two firms. This represented a significant reduction in the total amount sought by the fee motions.

Loeffler argues at length about unnecessary and unreasonable time included in the attorney fee award, but fails to cite to anything in the record to establish with conclusive evidence that "unnecessary" time was logged by the Association's attorney and included in the trial court's determination of reasonable attorney fees. Loeffler also fails to cite any legal authority for her argument that the trial court's determination should be reversed because it considered time logged by the Association's attorney "years before" her complaint was filed. On these facts, we cannot say the time logged by the Association's attorney for response to and participation in IDR and ADR was improperly considered as part of the trial court's determination of reasonable attorney fees. Similarly, Loeffler fails to cite to any conclusive evidence to establish that the trial court did not limit its determination of reasonable attorney fees to fees actually incurred by the Association.

Finally, Loeffler argues the award of attorney fees to the Association as the prevailing party following trial violated section 5910, subdivision (g), as it was a "fee" charged to Loeffler for her participation in IDR. Section 5910, subdivision (g), provides, "A member of the association shall not be charged a fee to participate in the [IDR] process." The trial court's award of reasonable attorney fees to the Association as the prevailing party after trial, pursuant to sections 1717 and 5975 is distinct from charging a fee to Loeffler for her participation in IDR. Loeffler cites to no authority to the contrary. There is no evidence of a fee being charged to Loeffler for her participation in IDR. In

sum, there is nothing in the record to establish the trial court abused its discretion in calculating the reasonable attorney fees awarded to the Association.

DISPOSITION

The postjudgment orders are affirmed. Respondent is awarded its costs on appeal.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

MARKS, J.*

*Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.